# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	U.S.
John Butler		Squad #5	201501773	V	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			Precinct:	18	Mo. SOL	EO SOL
Thursday, 03/12/2015 11:40 PM		§ 87(2)(b)			113	9	/12/2016	9/12/2016
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Tim	e Rec	eived at CC	RB
Fri, 03/13/2015 12:14 AM		CCRB	On-line website		Fri, 03/13	/2015	5 12:14 AM	
Complainant/Victim	Type	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. SGT Stephen Faber	03723	941721	113 PCT					
2. POM Kenneth Sepulveda	22097	947482	113 PCT					
3. POM Timothy Rizzo	07939	939325	113 PCT					
Witness Officer(s)	Shield N	lo Tax No	Cmd Name					
1. POM Joseph Algerio	07322	944312	113 PCT					
2. POM Kraig Hunter	23684	933861	113 PCT					
3. POM Derrick Coleman	22912	950219	113 PCT					
4. POM Charles Lovelock	22435	942082	113 PCT					
5. POM James Gherardi	03975	944592	113 PCT					
6. POM Anthony Canale	15509	944407	113 PCT					
Officer(s)	Allegati	on			Inv	estiga	ator Recor	nmendation
A.SGT Stephen Faber	Abuse: S	Sgt. Stephen Faber drew	his gun.					
B.POM Kenneth Sepulveda	Abuse: I	O Kenneth Sepulveda d	drew his gun.					
C.POM Timothy Rizzo	Abuse: I	O Timothy Rizzo drew	his gun.					
D.SGT Stephen Faber	Abuse: S	gt. Stephen Faber stopp	ped § 87(2)(b)					
E.POM Kenneth Sepulveda	Abuse: I	O Kenneth Sepulveda s	stopped § 87(2)(b)					
F.POM Timothy Rizzo		O Timothy Rizzo stopp						
G.SGT Stephen Faber	Abuse: S	Sgt. Stephen Faber author	orized the frisk of § 87	(2)(b)				
§ 87(4-b), § 87(2)(g)								
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### **Case Summary**

filed this complaint online with the CCRB on March 13,
2015, on behalf of her husband, §87(2)(b) provided video footage of
the incident from a security camera at her house (Board Review 01 -02). \$87(2)(b)
recorded this security footage on her cellphone and copied it to a disk. She noted that the time
stamp is incorrect in the video and reads an hour earlier than the actual incident time.
On March 12, 2015, at approximately 11:40 p.m., Sgt. Stephen Faber, PO Kenneth
Sepulveda, and PO Timothy Rizzo of the 113 <sup>th</sup> Precinct exited their black, unmarked Chevy
Impala and allegedly approached \$87(2)(b) with their guns drawn in front of his home \$87(2)(b)
in Queens (Allegation A, B, and C). These officers then stopped \$87(2)(b)
and Sgt. Faber authorized a frisk of §87(2)(b) (Allegation D, E, F, and G). The officers left the
incident location without arresting §87(2)(b) or issuing him a summons (Board Review 01-04).
Mediation, Civil and Criminal Histories
§ 87(2)(b) and § 87(2)(b) rejected mediation § 87(2)(b)
. As of March 24, 2015, \$87(2)(b) had not filed a notice of claim against
the City of New York regarding this incident (Board Review 14). [\$ 87(2)(b)] [\$\$ 86(1)(3)&(4)] [\$ 87(2)(c)]
Civilian and Officer CCRB Histories
This is \$87(2)(b) s first CCRB complaint. \$87(2)(b) has filed two prior
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complaints with the CCRB that were referred to outside agencies (Board Review 15 and 16).
complaints with the CCRB that were referred to outside agencies (Board Review 15 and 16).  Sgt. Faber has been a member of the NYPD for nine years and has been the subject of
Sgt. Faber has been a member of the NYPD for nine years and has been the subject of four prior complaints involving four allegations, none of which were substantiated. [887(2)(9)]
Sgt. Faber has been a member of the NYPD for nine years and has been the subject of four prior complaints involving four allegations, none of which were substantiated. § 87(2)(9)  PO Sepulveda has been a member of the CCRB for seven years and has been the subject
Sgt. Faber has been a member of the NYPD for nine years and has been the subject of four prior complaints involving four allegations, none of which were substantiated.  PO Sepulveda has been a member of the CCRB for seven years and has been the subject of one prior complaint involving six allegations, none of which were substantiated. Three of PO
Sgt. Faber has been a member of the NYPD for nine years and has been the subject of four prior complaints involving four allegations, none of which were substantiated. 887(2)(9)  PO Sepulveda has been a member of the CCRB for seven years and has been the subject of one prior complaint involving six allegations, none of which were substantiated. Three of PO Sepulveda's prior allegations were for a stop, frisk, and search of a person. The stop was
Sgt. Faber has been a member of the NYPD for nine years and has been the subject of four prior complaints involving four allegations, none of which were substantiated.  PO Sepulveda has been a member of the CCRB for seven years and has been the subject of one prior complaint involving six allegations, none of which were substantiated. Three of PO
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### Findings and Recommendations

### **Explanation of Subject Officer Identification**

All officers who were interviewed either denied being present during the incident or did not recall the incident (Board Review 05-13), and there was no police documentation of the incident (Board Review 17-38 and 43). The video footage of the incident and the civilians' officer descriptions were unhelpful in identifying the subject officers. However, the subject officers were identified through the following investigative actions:

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First, \$87(2)(b) and \$87(2)(c) reported that the subject officers rode in an unmarked, black Chevy with a license plate number beginning with '\$87(2) (Board Review 03-04). The daily vehicle assignment sheet from the 113<sup>th</sup> Precinct listed five unmarked vehicles assigned to the precinct on the date of the incident (Board Review 29), and a request to Fleet Services revealed that one of these vehicles, RMP #445, was a black Chevy Impala with license plate number '\$87(2)(c) (Board Review 30). No other unmarked vehicle assigned to the 113<sup>th</sup> Precinct possessed a license plate number beginning with '\$87(2)(c) and the incident occurred within the confines of the 113<sup>th</sup> Precinct.

The 113<sup>th</sup> Precinct Roll Call for Tour 3 revealed that nine officers were assigned to plainclothes, anti-crime duties on the date of the incident: Sgt. Faber, PO Sepulveda, PO Rizzo, PO Joseph Algerio, PO Charles Lovelock, PO Derrick Coleman, PO Kraig Hunter, PO Timothy Rizzo, PO James Gherardi and PO Anthony Canale (Board Review 28). Memo books and MOS photos were requested for all of these officers, and memo book entries revealed that Sgt. Faber, PO Algerio, and PO Sepulveda were assigned to RMP #445 during the incident (Board Review 26-27 and 32). The unmarked vehicle utilization log also revealed that only PO Sepulveda worked as the operator for this vehicle during the incident (Board Review 37).

Upon interviewing these officers, it was revealed that PO Alegrio arrested an individual prior to the incident and that the officers returned to the stationhouse to process the arrest at approximately 8:50 p.m. (Board Review 05-06 and 08). PO Algerio remained at the stationhouse to process the arrest for the remainder of his tour, and his memo book entry corroborated this (Board Review 08 and 32). PO Sepulveda acknowledged leaving the stationhouse at some point after 8:50 p.m., and he did not recall switching cars at any point (Board Review 06). Sgt. Faber could not recall leaving the stationhouse again after 8:50 p.m., and PO Algerio did not recall whether Sgt. Faber remained at the stationhouse with him to process the arrest (Board Review 05 and 08). Sgt. Faber did not recall whether he switched partners at any point during his tour, and he had no recollection of any actions he took after processing PO Algerio's arrest at 8:50 p.m. (Board Review 05).

The investigation determined that Sgt. Faber and PO Sepulveda left the stationhouse with PO Rizzo in RMP # 445 sometime after 8:50 p.m., identifying them as the subject officers in this case. S87(2)(9) every other officer denied being present during the incident and provided sufficient and credible explanations for their whereabouts (Board Review 08-13). Only Sgt. Faber, PO Sepulveda, and PO Rizzo failed to recall whether they were present during the incident, and they did not provide any alternative explanation for their whereabouts (Board Review 05-07). Sgt. Faber, PO Sepulveda, and PO Rizzo also match S87(2)(9) and S87(2)(9) s descriptions of the subject officers as white males in their 30s standing approximately 6'0" tall (Board Review 33-35).

PO Rizzo stated that he was assigned to anti-crime duties in the field on the date of the incident, [887(2)(9)]
(Board Review 07). He initially stated that he was assigned to RMP #445 with PO Gherardi and that he did not switch cars or partners during his tour. PO Rizzo thought he worked with PO Gherardi during the incident because PO Gherardi was his usually partner, but he had no other reason for believing this. Upon being confronted with the fact that RMP #445 was used by the subject officers during the incident, PO Rizzo stated that he could have been assigned to a different vehicle but that he is normally assigned to RMP #445. PO Rizzo then stated that he may have worked with PO Sepulveda during his tour and that he may have switched partners at some point during his tour. PO Rizzo did not recall whether he left the stationhouse with PO Sepulveda

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at approximately 8:50 p.m., and he did not recall seeing Sgt. Faber at this time. PO Rizzo did not recall any specific police actions that he undertook with PO Sepulveda. PO Rizzo did not document his vehicle assignment or his partner in his memo book, and he had no memo book entries from the date of the incident (Board Review 36).

PO Lovelock, PO Coleman, and PO Hunter stated that they worked together during their entire tour and were assigned to unmarked RMP #651, which is a black Ford Crown Victoria and was not present during the incident (Board Review 11-13). They stated that they worked a conditions assignment, not an anti-crime assignment, and were listed on the roll call as anti-crime officers because they wore plainclothes. They denied being present during the incident, and they denied switching partners or cars at any point during their tours. Memo book entries for these officers were consistent with this testimony, and the unmarked vehicle utilization log confirmed that only PO Coleman worked as the operator for this vehicle during the incident (Board Review 20-22 and 38).

PO Gherardi and PO Canale were assigned to anti-crime duties, but both officers stated that they performed administrative duties in the stationhouse for their entire tours (Board Review 09-10). PO Gherardi and PO Canale denied leaving the stationhouse at any point during their tours and stated that they were not present during the incident (Board Review 09-10). Their memo book entries confirm that they were assigned to administrative duties and were in the stationhouse during their entire tours (Board Review 18 and 19).

§ 87(2)(g)
Allegation A – Abuse of Authority: Sgt. Stephen Faber drew his gun.
Allegation B – Abuse of Authority: PO Kenneth Sepulveda drew his gun.
Allegation C – Abuse of Authority: PO Timothy Rizzo drew his gun.
§ 87(2)(b) drove to his house at $\frac{$87(2)$}{(b)}$ in Queens from his job as
plumber (Board Review 03). §87(2)(b) observed unidentified police officers in two unmarked
vehicles, one gray and one black, stop a vehicle driven by an unidentified individual on the corner
of $\S 87(2)$ was speaking with $\S 87(2)(6)$ on his
cellphone, and he told her about the car stop. §87(2)(b) continued driving and arrived at his
house, which was approximately one block away from the car stop. §87(2)(b) exited his vehicle
and walked toward his house. At this time, he saw the same gray police car from the car stop
drive down \$87(2) and turn right onto \$87(2) Approximately 30 seconds later, the
same black police car from the car stop, which was occupied by Sgt. Faber; PO Sepulveda; and
PO Rizzo, drove down \$87(2) and stopped in front of \$87(2)(b) s residence. Sgt. Faber,
PO Sepulveda, and PO Rizzo, asked §87(2)(b) what he held in his hand while sitting in their
vehicle. §87(2)(b) carried a small thermos of coffee in his hand, and he raised his hands in the
air in response to the officers' question. Sgt. Faber, PO Sepulveda, and PO Rizzo then allegedly
exited their vehicle and approached §87(2)(b) with their guns drawn.
believed that the officers drew their guns due to their manner of speaking
and because they placed their hands on their hips (Board Review 42). He stated that the officers
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also held flashlights and that the objects that he thought were guns might have been flashlights.  could not clearly see the officers because they shined their flashlights in his eyes.  was inside of the house during this initial interaction and did not see the officers approach (Board Review 04). The video footage from the incident does not show the officers exit their vehicle (Board Review 01-02). However, it shows the front of the officers' car, and it shows the officers approach seconds after their vehicle arrived in front of source. None of the officers have their guns drawn at this time. Two of the officers have their hands near their hips, and two of the officers are shown pointing their flashlights at source.  None of the subject officers recalled the incident even after observing the video footage (Board Review 05-07). Sgt. Faber and PO Rizzo denied drawing their guns during the incident. PO Sepulveda did not recall drawing his gun during the incident. Sgt. Faber stated that no other officer drew his gun during the incident, and PO Rizzo and PO Sepulveda did not recall whether any other officer did so.
Allegation D – Abuse of Authority: Sgt. Stephen Faber stopped \$87(2)(b)  Allegation E – Abuse of Authority: PO Kenneth Sepulveda stopped \$87(2)(b)  Allegation F – Abuse of Authority: PO Timothy Rizzo stopped \$87(2)(b)  Allegation G – Abuse of Authority: Sgt. Stephen Faber authorized the frisk of \$87(2)(b)  According to \$87(2)(b)  Sgt. Faber, PO Sepulveda, and PO Rizzo approached him as he stood in front of his house (Board Review 03). The unmarked gray police car returned to the corner of \$87(2)(b)  at this time, but no officer exited from this vehicle during
the incident. One of the officers removed his thermos from his hand. \$\frac{\$87(2)(0)}{2}\$ then exited the house and approached the officers. \$\frac{\$87(2)(0)}{2}\$ asked the officers why they stopped him. One of the officers responded by saying that they thought \$\frac{\$87(2)(0)}{2}\$ had a weapon and that they needed to search him. One of the officers frisked \$\frac{\$87(2)(0)}{2}\$ at this time by feeling the outside of his clothing along his chest, the front of his waistband, and between his legs. This officer did not place his hands into \$\frac{\$87(2)(0)}{2}\$ s pockets or search him in any way.
She confirmed that an officer frisked \$87(2)(b) but did not search him. The officers left the scene after frisking \$87(2)(b) without arresting him or issuing him a summons.
At the 2:00 minute mark of the video, \$87(2)(b) s body can be seen moving backward while an officer in front of him uses his hands make contact with s body. At the 2:14 mark, the officer in front of \$87(2)(b) is shown bending down in a fashion that is consistent with a frisk.

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None of the subject officers recalled the incident even after viewing the video footage (Board Review 05-07). Sgt. Faber did not recall interacting with \$\frac{897(2)(b)}{297(2)(b)} \tag{Out: PO Rizzo also denied stopping or frisking \$\frac{897(2)(b)}{297(2)(b)} \tag{Out: PO Rizzo also denied stopping or frisking \$\frac{897(2)(b)}{297(2)(b)} \tag{Out: PO Rizzo also denied and he stated that no other officer did so. PO Sepulveda did not recall stopping or frisking \$\frac{897(2)(b)}{297(2)(b)} Out: PO Rizzo also denied and he did not recall whether any other officer he worked with did so.
According to <i>People v. DeBour</i> , reasonable suspicion of criminality is required for a stop, and an officer must have reasonable suspicion that he/she is in danger by virtue of the individual being armed in order to frisk that individual (Board Review 39).  §87(2)(9)
§ 87(4-b), § 87(2)(g)

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Pod:		
Investigator: Signature	Print	Date
Pod Leader: Title/Signature	Print	Date
Attorney: Title/Signature	Print	